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AMERICAN PRESIDENT LINES, LTD.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MUND & FESTER GMBH & CO.KG a/s/o  
PHOENIX FOODS, S.A.,

Plaintiff,

-against-

MV MOL BRASILIA and MV INNOVATION,  
their engines, boilers, tackle, furniture, apparel,  
etc. *in rem*; and AMERICAN PRESIDENT  
LINES, LTD *in personam*,

Defendants.

07 Civ. 8200 (JES)

**ANSWER**

NOW COMES Defendant, American President Lines, Ltd. ("APL"), by and through its attorneys, Holland & Knight LLP, answering the Complaint of Plaintiff Mund & Fester GMBH & CO.KG a/s/o Phoenix Foods, S.A., ("Plaintiff"), and respectfully states upon information and belief:

**PARTIES**

1. Denies having knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph "1" of the Complaint.

2. Admits that APL was and still is a business entity duly organized and existing under the laws of a foreign state, with a place of business located at 1111 Broadway, Oakland, California 94607, and was and still is doing business in this jurisdiction as a common carrier of goods by water for hire. Denies the remaining allegations set forth in paragraph "2" of the Complaint.

3. Denies having knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph "3" of the Complaint.

**JURISDICTION**

4. Admits the allegations set forth in paragraph "4" of the Complaint.

**FACTS**

5. Admits that on or about October 5, 2006, a cargo of asparagus was delivered to APL in Callao, Peru and that APL transported the cargo under bill of lading numbers APLU 900032173 and APLU 900032337 from the Port of Callao, Peru to the Port of San Pedro, California. Denies the remaining allegations set forth in paragraph "5" of the Complaint.

6. Denies the allegations set forth in paragraph "6" of the Complaint.

7. Admits the allegations set forth in paragraph "7" of the Complaint.

8. Admits that the consignment arrived in San Pedro, California on October 24, 2006. Denies having knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph "8" of the Complaint.

9. Denies the allegations set forth in paragraph "9" of the Complaint.

10. Denies the allegations set forth in paragraph "10" of the Complaint.
11. Denies the allegations set forth in paragraph "11" of the Complaint.
12. Denies the allegations set forth in paragraph "12" of the Complaint.
13. Denies having knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph "13" of the Complaint.
14. Denies having knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph "14" of the Complaint.
15. Denies having knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph "15" of the Complaint.
16. Denies that Plaintiff is entitled to maintain this action and denies having knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations set forth in paragraph "16" of the Complaint.
17. Denies the allegations set forth in paragraph "17" of the Complaint.
18. Denies the allegations set forth in paragraph "18" of the Complaint.
19. Allegation not directed at APL, thus no response required.
20. Not by way of an allegation, thus no response required.

**APL'S FIRST AFFIRMATIVE DEFENSE**

21. APL alleges, by way of an affirmative defense, that Plaintiff's Complaint fails to state a claim upon which relief can be granted. Said shipments described in Plaintiff's Complaint were subject to all the terms, conditions and exceptions contained in bills of lading APLU 900032173 and APLU 900032337 to which Plaintiff agreed to be and is bound. Any shortage, loss or damage to the shipment, which APL specifically denies, was due to causes for which APL was not liable or responsible by virtue of the provisions of the Carriage of Goods by Sea

Act ("COGSA"), *reprinted in* note following 46 U.S.C. § 30701, (formerly 46 U.S.C. § 1301 *et seq.*), and/or the Harter Act, 46 U.S.C. §§ 30702-30707 (formerly 46 U.S.C. App. § 190 *et seq.*) and/or the applicable APL tariffs and/or provisions of the APL bills of lading and/or the general maritime law of the United States.

**APL'S SECOND AFFIRMATIVE DEFENSE**

22. Any damage sustained or to be asserted by Plaintiff, which APL specifically denies, was a result of the negligence or recklessness of either Plaintiff and/or other parties over which APL has no control and/or for which APL cannot be held liable.

**APL'S THIRD AFFIRMATIVE DEFENSE**

23. If, which is denied, APL is found liable for any loss or damage to the cargo in question, Plaintiff's right to recovery from APL Defendants must be denied for its assured's failure to mitigate its damages. 46 U.S.C. App. § 1304.

**PRAYER FOR RELIEF**

WHEREFORE, APL respectfully requests:

1. The Complaint against APL be dismissed with prejudice and that judgment be entered in favor of APL; and,
2. For such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
October 18, 2007

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